



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 30 2019

REPLY TO THE ATTENTION OF:

VIA E-MAIL
RETURN RECEIPT REQUESTED

Matt B. Eugster
Partner
Varum Attorneys At Law
333 Bridge Street NW
Grand Rapids, Michigan 49505
Email: mbeugster@varnumlaw.com

Dear Mr. Eugster:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves A&L Metal Company, docket no. CAA-05-2019-0021. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on April 30, 2019.

Pursuant to paragraph 32 of the CAFO, A&L Metal Company must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Cathleen Martwick, Associate Regional Counsel at (312) 886-7166.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Frank", is written over a horizontal line.

Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/TN)

Enclosure

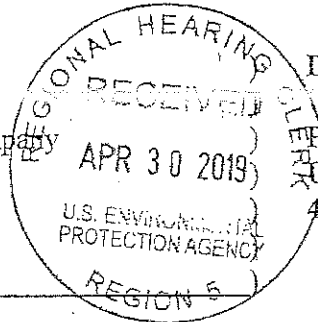
cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Cathleen Martwick/via electronic mail
Tom Hess, Unit Manager, MDEQ/via electronic mail
Shane Nixon, MDEQ/via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

A&L Iron & Metal Company
Gaylord, Michigan,

Respondent.



Docket No. CAA-05-2019-0021

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is A&L Iron & Metal Company (A&L), a corporation doing business in Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the CAA, U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Reciprocating Internal Combustion Engines (RICE MACT) at 40 C.F.R. §§ 63.6580 through 63.6675.

10. The RICE MACT applies to owners and operators of stationary reciprocating internal combustion engines (RICE) at major and area sources of hazardous air pollutant (HAP) emissions.

11. The RICE MACT, at 40 C.F.R. § 63.6603(a) requires the owner or operator of a stationary RICE to comply with operating limitations established in Table 2b of the RICE MACT.

12. The RICE MACT, at 40 C.F.R. § 63.6603(a) requires the owner or operator of a stationary RICE to comply with numerical emission limitations established in Table 2d of the RICE MACT.

13. The RICE MACT, at 40 C.F.R. § 63.6595(a) states that an existing stationary compression ignition (CI) RICE located at an area source of HAP emissions must comply with applicable emission limitations, operating limitations, and other requirements, no later than May 3, 2013.

14. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

15. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015 and \$46,192 per day of violation up to a total of \$369,532 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

16. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

17. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

18. A&L owns and operates a metal shredding and recycling facility located at 2000 Milbocker Road, in Gaylord, Michigan (Facility).

19. The Facility is an area source of HAP emissions.

20. A&L owns and operates an existing stationary RICE at the Facility.

21. A&L's Facility meets the RICE MACT definition of affected source found at 40 C.F.R. § 63.6590.

22. A&L's existing stationary diesel RICE is a CI RICE, manufactured in 1978, with an output rating of 2.6 megawatts or approximately 3506 horsepower.

23. The Michigan Department of Environmental Quality (MDEQ) issued a Permit to Install, Permit Number 173-08, on August 12, 2008, which allows A&L to operate a CI RICE.

24. As of May 3, 2010, the RICE MACT applied to existing stationary RICE sources and adopted emission limitations, operating requirements, monitoring requirements and recordkeeping requirements for each engine category, 75 Fed. Reg. 9675 (March 3, 2010).

25. The A&L CI RICE is an existing area source constructed or reconstructed prior to June 12, 2006, and is required to comply with the RICE MACT no later than May 3, 2013.

26. EPA conducted a Clean Air Act inspection of the A&L Facility on October 4, 2017 (2017 Inspection).

27. At the time of the 2017 Inspection, A&L had not equipped or retrofitted its RICE with pollution control technology necessary to comply with any of the compliance options for CI RICE listed in Table 2b of the RICE MACT.

28. During the 2017 Inspection, EPA inspectors observed visible particulate matter emissions from the diesel engine stack. The presence of visible emissions from a RICE is inconsistent with RICE MACT compliance.

29. On March 28, 2018, EPA issued to A&L a finding of violation (FOV) alleging that it violated the RICE MACT.

30. On May 3, 2018, representatives of A&L and EPA discussed the March 28, 2018 FOV.

31. A&L has failed to comply with the applicable requirements of the RICE MACT, including emission limitations, operating requirements, testing requirements, monitoring requirements and recordkeeping requirements associated with the RICE MACT, in violation of the CAA.

Civil Penalty

32. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation, prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$166,571. Within 30 days after the effective date of this CAFO, Respondent must pay the \$166,572 civil penalty by Automated Clearinghouse (ACH) also known as REX or remittance express electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

33. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Cathleen Martwick (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

37. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: martwick.cathleen@epa.gov (for Complainant), and

mbeugster@varnumlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

39. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

40. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 38, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

41. Respondent certifies that it is complying fully with the RICE MACT.

42. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

43. The terms of this CAFO bind Respondent, its successors and assigns.

44. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

45. Each party agrees to bear its own costs and attorneys fees in this action.

46. This CAFO constitutes the entire agreement between the parties.

A&L Iron and Metal Company, Respondent

4-9-19

Date

Bret Bandt

Bret Bandt

Vice President

A&L Iron and Metal Company

United States Environmental Protection Agency, Complainant

4/26/19
Date

Edward Nam
Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

In the Matter of: A&L Iron and Metal Company

Docket No. CAA-05-2019-0021

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4/30/19
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: A&L Iron and Metal Company
Docket Number: CAA-05-2019-0021

CERTIFICATE OF SERVICE

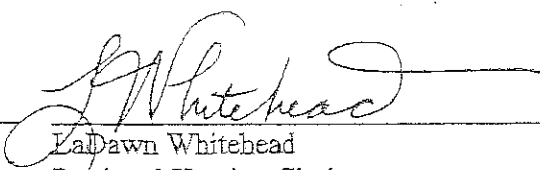
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2019-0021, which was filed on April 30, 2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Matt B. Eugster
mbeugster@varnumlaw.com

Copy by E-mail to Cathleen R. Martwick
Attorney for Complainant: Martwick.cathleen@epa.gov

Copy by E-mail to Ann Coyle
Regional Judicial Officer: coyle.ann@epa.gov

Dated: April 30, 2019


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5